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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,289	04/24/2001	Antonio Atwater	338528002US1	7918

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SIEMENS CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER
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NGUYEN, PHUONGCHAU BA

ART UNIT	PAPER NUMBER
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2416

MAIL DATE	DELIVERY MODE
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11/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/843,289	<b>Applicant(s)</b> ATWATER ET AL.	
	<b>Examiner</b> PHUONGCHAU BA NGUYEN	<b>Art Unit</b> 2416	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 25-100.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

//Melvin Marcelo//  
 Primary Examiner, Art Unit 2416

Continuation of 11. does NOT place the application in condition for allowance because:

1/. Applicant argued that Rogers-Monteiro do not teach "sending to the subscriber unit a response to the received request with an indication of the identified channels, the response being sent using HTTP protocol and IDENTIFYING THE IP MULTICAST GROUP ASSIGNED TO EACH IDENTIFIED CHANNEL," of claims 25, 46, 58, 75; and "the response managed via IP multicast capable TCP/IP software," of claims 46 and 58.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rogers disclose step 701-fig.7 for sending call request to switch and in step 702 switch sends list of available programs (see also Figure 7 wherein step 703, user selects aprgram) but Rogers does not explicitly disclose the request being sent using HTTP protocol and each channel being assigned an IP multicast group. However, in the same field of endeavor, Monteiro discloses a method and apparatus for providing audio and/or visual communication services in real time to a multiplicity of identifiable user on communication network, such as Internet (0002 & 0004), i.e., in 0004-"multi-party conferencing capability, analogous to that found in the public telephone system and broadcasting to a limited number of nodes, is of considerable interest to users of packet switched networks. To satisfy such demands, packets DESTINED for SEVERAL RECIPIENTS having encapsulated in a unicast packet and forwarded from a source to a point in a network where the packet have been replicated and forwarded on to all desired recipients. This technique is known as IP MULTICASTING and the routers have become available that can route the multicast addresses (class D addresses) provided for in communication protocols such as TCP/IP and UDP/IP (corresponding to "the response managed via IP multicast capable TCP/IP software" of claims 46 & 58. Although this limitation was not pointed out explicitly in the final office action, however, Monteiro explicitly teaches the IP Multicasting and inherently has its protocols as TCP/IP software as shown in 0004). and A multicast address is essentially an address for a group of host computers who have indicated their desire to participate in that group." See also figure 4 wherein multicast routers 70 broadcasting to users 40 and in figure 19 wherein user must log in to requesting protocol list, the server providing active channel to the user (the identification of user is the user unit itself, because without its designation as self identifier, the server could not replied properly to its request-emphasis added. Therefore, it would have been obvious to an artisan to apply Monteiro's teaching to Roger's system with the motivation being to control which user to receive the real time information.

2/. Applicant argued that Rogers-Monteiro do not teach "wherein the identifying of one or more available channels identifiers less than all of the available channels" of claims 27, 47.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rogers discloses figure 7a-step 703 as when the user selected a program on one of the available channels, i.e., at a particular point in time, each channel comprises a program-emphasis added.

3/. Applicant argued that Rogers-Monteiro do not teach "wherein available channel are provided to the computer system by receiving from a plurality of content providers indications of CHANNELS that made available by each content provider" of claims 29, 49, 61, 84.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant is directed to Rogers step702-Fig.7A as a list of available programs from the directory (content providers) at a particular point in time on different available channels, i.e., premium channels having premium programs which had movies/video available for viewing at a certain time-emphasis added.

4/. Applicant argued that Rogers-Monteiro do not teach "wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol" of claims 30, 62, 81, 85.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hari discloses in the abstract, lines 8-11 wherein "segmentation consists of dividing the video into several fixed length segments and then transmitting the segments at regular intervals instead of transmitting the entire video continuously"; and page 309, right column, lines 16-17 wherein "a control channel between user and headend (content provider) is available during video play back. A video is segmented in a to S fixed length segments length Ts minutes," for the missing limitation as stated. Therefore, it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.

5/. Applicant argued that Rogers-Monteiro do not teach "providing a subscriber channel list for the subscriber that indicates CHANNELS which the subscriber is permitted to access," of claims 41, 54, 96.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rogers further discloses fig.7a-step 702 as a list of available programs at a particular point in time on different available channels, i.e., premium channels having premium programs which had movies/video for available for viewing at a certain time-emphasis added. Although Rogers does not explicitly disclose a list of available programs as a list of channels, but the program having data to be played at a certain time length (slot) as requested is a channel itself. The feature of program is inherently a channel in cable system (e.g., see figure 5 in U.S. Pat. No. 5,477,263 showing an example of programs as channels-emphasis added).

6/. Applicant argued that Rogers-Monteiro do not teach "wherein data for a channel is received at the computer system and forwarded to the subscriber unit," of claims 42, 71, 80, 97.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rogers further discloses fig.7a-step 702 when controller transmits a list of available programs to users, col.12, lines 31-39. Although Rogers does not explicitly disclose a list of available programs as a list of channels, but the program having data to be played at a certain time length (slot) as requested is a channel itself. This is a well-known feature of a channel as program (e.g., see figure 5 in U.S. Pat. No. 5,477,263 showing an example of programs as channels-emphasis added).

7/. Applicant argued that Rogers-Monteiro-Desimone do not teach "wherein the subscriber is identified using a media access control address" of claim 94; and "wherein the subscriber is identified using the IP address" of claim 95.

-In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated in the rejection, DeSimone discloses in the ABSTRACT wherein "each client terminal is assigned a multicast IP address"(claim 95) and this assigned multicast IP address would be considered as user's destination/source address, emphasis added (claim 94). Therefore, it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.

8/. Applicant argued that there is non-obvious because of hindsight to combine references as taught in the final office action to disclose the claimed limitations in claims 26, 28, 31, 32, 33, 35, 36, 37, 38, 39, 40, 43, 44, 48, 50, 51, 52, 53, 56, 57, 59, 60, 63, 64, 65, 67, 68, 69, 70, 72, 73, 74, 76, 77, 78, 79, 82, 83, 86, 87, 88, 90, 91, 92, 93, 98, 99, 100.

-In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9/. Applicant argued that the combination of references in the final office action does not teach the inherent feature, "wherein the channel source address is an ATM virtual path and transmission circuit," of claims 34, 66, 89.

-In response to applicant's argument, applicant is directed to column 2, lines 40-44 of Alexander wherein "the source LEC can then use the ATM address to establish a connection to unicast data to the destination, a so-called data direct Virtual Channel Connection (VCC), and transmit its data to the destination thereon", hence the ATM address is the channel source address and it is being used to establishing VCC for transmission data to the destination. ATM virtual path and the transmission circuit are inherent in the VCC since the VCC is an end-to-end connection between two devices (i.e., LEC and ELAN) but would inherent the path as if the connection is from LEC to ATM switch via ELAN, see figure 2 (emphasis added). Clearly, Alexander's system is a circuitry system, therefore figure 2 having VCC, transmission circuit, and virtual path would be established in virtue of end-to-end connections of more than two devices (i.e., LEC 203 to LEC 304 via ELAN 201, fig.2, emphasis added). Therefore, it would have been obvious to apply Alexander's teaching to Rogers's system with the motivation being to provide data over ATM network unicastly.

10/. Applicant argued that the combination of references in the final office action does not teach the inherent feature, "receiving from a subscriber unit a request for a list of available channels the request including information identifying a subscriber," of claims 46, 58, 81.

-In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is directed to Rogers's figure 7a-step 702 wherein switch sends list of available programs, at step 703-fig.7a user selects a program, the feature of the identity of the subscriber is inherent in the request to the switch via data channel, see col.12, lines 26-28. However, Rogers does not explicitly disclose the request being sent using

HTTP protocol and each channel being assigned an IP multicast group. However, in the same field of endeavor, Monteiro discloses a method and apparatus for providing audio and/or visual communication services in real time to a multiplicity of identifiable user on communication network, such as Internet (0002 & 0004), i.e., in 0004-"multi-party conferencing capability, analogous to that found in the public telephone system and broadcasting to a limited number of nodes, is of considerable interest to users of packet switched networks. To satisfy such demands, packets DESTINED for SEVERAL RECIPIENTS having encapsulated in a unicast packet and forwarded from a source to a point in a network where the packet have been replicated and forwarded on to all desired recipients. This technique is known as IP MULTICASTING and the routers have become available that can route the multicast addresses (class D addresses) provided for in communication protocols such as TCP/IP and UDP/IP (corresponding to "the response managed via IP multicast capable TCP/IP software" of claims 46 & 58. Although this limitation was not pointed out explicitly in the final office action, however, Monteiro explicitly teaches the IP Multicasting and inherently has its protocols as TCP/IP software as shown in 0004). and A multicast address is essentially an address for a group of host computers who have indicated their desire to participate in that group." See also figure 4 wherein multicast routers 70 broadcasting to users 40 and in figure 19 wherein user must log in to requesting protocol list, the server providing active channel to the user (the identification of user is the user unit itself, because without its designation as self identifier, the server could not replied properly to its request-emphasis added. Therefore, it would have been obvious to an artisan to apply Monteiro's teaching to Roger's system with the motivation being to control which user to receive the real time information and to simplify the request/provide of VOD services over Internet.

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Examiner, Art Unit 2416